

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	
)	
Public Service Cellular, Inc. and)	
Enterprise Wireless PCS, L.L.C.)	
Petition for Waiver of Section 20.18(g))	
of the Commission's Rules)	

To: The Wireless Telecommunications Bureau

**PETITION OF PUBLIC SERVICE CELLULAR, INC. AND
ENTERPRISE WIRELESS PCS, L.L.C. FOR LIMITED WAIVER OF
SECTION 20.18(g) OF THE COMMISSION'S RULES**

Public Service Cellular, Inc. ("PSCF") and Enterprise Wireless PCS, L.L.C. ("Enterprise") (together "the Companies"), by their attorneys and pursuant to Sections 1.3 and 1.925 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),^{1/} hereby petition the Commission to waive the September 1, 2003 deadline to sell and activate location-capable handsets and the November 30, 2003 and May 31, 2004 deadlines to ensure that at least 25 percent and 50 percent of all new handsets activated are location-capable.^{2/}

^{1/} 47 C.F.R. §§1.3, 1.925.

^{2/} The subject deadlines are codified in Sections 20.18(g)(i)-(ii) of the Commission's Rules, 47 C.F.R. §§20.18(g), which was modified by Commission Order. See Revision Of The Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102 (Order To Stay), 17 FCC Rcd 14841 (2002), (hereinafter "*Stay Order*").

I. STATEMENT OF FACTS

The Companies provide analog and TDMA-based cellular service in west-central Georgia, eastern Alabama and a portion of South Carolina. This combined service area includes fifty eight (58) counties. The Companies service area is predominantly sparsely populated rural areas lacking concentrated centers of commercial and industrial activity. Because of these demographic characteristics, the Companies strive to maximize the geographic “footprint” served by each of their cellular base stations (or cells). For the same reason, overlap of the reliable service contours of adjacent cells is typically limited to areas where “hand-off” from one cell coverage area to another is essential for continuous, uninterrupted communications.

The Companies provide service throughout most of their coverage area with cells having the minimal measure of overlap needed to permit reliable cellular communications, but far from sufficient to permit the triangulation of a mobile subscriber unit’s geographic position that a network-based E911 solution needs to achieve Section 20.18(h) accuracy. Given the constraints posed by this network configuration, the Companies have been unable to find a single network solution vendor that will commit to achieving Section 20.18(h) Phase II accuracy in the rural portions of the Companies’ service area. Based on the foregoing, the Companies have determined that the only E911 Phase II technology currently available that might realize the Commission’s E911 accuracy requirements appears to be a handset-based solution.^{3/} However, with Cingular and AT&T,

^{3/} The Companies are not confident that even a handset-based solution will be able to achieve the Commission’s Phase II accuracy standards and have petitioned, as a member of the Tier III Coalition for Wireless E911, for the Commission to forbear, until December 31, 2005, from enforcing the quantitative accuracy standards set forth in Section 20.18(h)(1) and (2) of the Rules. *Petition Pursuant to 47 U.S.C. §160(c) for Forbearance from E911 Accuracy Standards Imposed on Tier III Carriers for Locating Wireless Subscribers Under Rule Section 20.18(h)*, WT Docket No. 02-377 (November 20, 2002).

the two largest carriers who employ the TDMA air interface phasing out their use of that protocol in favor of migrating to GSM, developers of handset-based solutions have discontinued development of Phase II solutions for TDMA, including development of a TDMA-based automatic location identifier ("ALI") handset. Absent a TDMA location-capable handset, the Companies are now compelled to replace their entire digital network with a new protocol for which ALI-capable handsets are (or will be) available if it is to attain Phase II compliance.

The costs associated with this transition from TDMA to a Phase II-capable digital protocol for the Companies are daunting. To transition their entire network is a multi-million dollar undertaking; even without allowing for system coverage expansion. However, the Companies have researched and analyzed the available protocols and have begun the process of overlaying, and ultimately replacing, their TDMA infrastructure with GSM technology. Due to the considerable high cost of overlaying their infrastructure, the Companies have planned the migration to GSM in four phases for the Companies' core markets. The first two phases will begin in December of 2003, with the last two phases in their core markets and deployment in PSCI's 1900 MHz PCS expansion markets following thereafter.

As of this point in time, the Companies do not have any presently-outstanding Phase II requests. Accordingly, there is no present Phase II implementation deadline. However, in working with PSAPs in their coverage areas, the Companies anticipate such requests in the future. Unfortunately, the PSAPs most-likely to first trigger those deadlines are in areas where the Companies operate only isolated cell sites. In this configuration, no network-based solution can perform meaningful triangulation. While the handset-based solutions are much more accurate in these situations, there are no TDMA or GSM ALI-capable handsets available today. It is unlikely

that there will ever be TDMA handsets available. Accordingly, to the extent that a handset-based solution proves necessary to meet the Commission's accuracy requirements, given the lack of any compatible handsets today for either the existing TDMA or the proposed GSM technology, the Companies seek the instant waivers.

II. REQUEST FOR LIMITED WAIVER OF SECTION 20.18(g)

Section 1.925(b)(3) of the Commission's Rules, 47 C.F.R. § 1.925(b)(3), sets forth the general standards for determining when a waiver should be granted in Wireless Telecommunications Bureau ("WTB") proceedings and requires a waiver proponent to demonstrate either that: (a) a rule's underlying purpose would be frustrated or dis-served by its instant application, and that waiver therefore serves the public interest; or (b) a rule's application, due to unique or unusual circumstances, would be inequitable, unduly burdensome or contrary to the public interest, or that the proponent has no reasonable alternative. Under either of these standards, grant of the requested waiver is warranted.

A. No Reasonable Alternative to Waiver Request

With no present deadline trigger, the Companies would not be deploying a network-based solution at this time. However, network-based solutions are incapable of performing the requisite triangulation from isolated rural cell sites. Accordingly, the handset-based solution may well prove to be the only option. However, implementation of a handset solution triggers the deadlines for which the instant waiver is sought. Since the handsets do not presently exist, the Companies have

no alternative but to seek the instant waivers in order to preserve the handset option as a viable alternative.

B. Waiver is in the Public Interest

Moreover, granting the limited waiver sought by the Companies here will serve the public interest without prejudice to PSAPs, the public safety community, or the general public. Specifically, the proposed waiver will still promote the Commission's paramount objective of rapidly deploying Phase II E911 service by allowing the Companies to extend to its customers and to the public the most accurate location technology at the earliest possible date. Although GSM location-capable handsets are currently not available, the Companies would deploy a GSM handset-based E911 Phase II solution as part of their GSM network overbuild, as soon as a deadline is triggered and ALI-capable handsets are available.

The instant waiver will not come at the cost of delay, increased cost or other prejudice to PSAPs or the public safety community in the Companies' service territory. Indeed, there are no outstanding PSAP requests that set deadlines for the deployment of a Phase II (or Phase I) system,^{4/} and no E911 Phase II solution would be deployed by the Companies until it receives such a request. Regarding deployment of a handset-based approach, no delay will ensue from grant of the limited waiver proposed here. Commercial unavailability of ALI-capable handsets for either digital technology, and not the waiver sought herein is causing the delay. Thus, the modest extension

^{4/} As the Commission is aware, PSCI has received Phase II requests from the Calhoun County and Ozark-Dale County PSAPs. PSCI operates only isolated cell sites in those areas and both PSAPs have withdrawn their requests pending PSCI's overbuild of its existing TDMA network.

requested here will prejudice neither PSAPs, the public safety community, the Companies' subscribers, nor the general public.

In sharp contrast, denial of the waiver will serve no purpose. GSM and TDMA location-capable handsets simply do not yet exist at this time making it impossible to comply with the current handset-based solution deadlines. Similarly, the Companies continue to be unable to identify a viable network-based solution that can meet the Commission's accuracy requirements when deployed in the Companies' rural market with its network configuration. Coupled with the fact that there is no present E911 Phase II deadline makes it abundantly clear that denial of this waiver would neither hasten the availability of E911 Phase II service to the market nor serve any other public interest.

C. "Good Cause" Exists to Grant the Instant Waiver Request

Alternatively, pursuant to Section 1.3 of the Rules, the Commission has authority to waive its rules if there is "good cause" to do so.^{5/} As detailed above, the Companies have investigated TDMA and GSM handset-based solutions and were unable to find a single manufacturer that produces a TDMA or GSM location-capable handset. Therefore, grant of the requested waiver is consistent with the Commission's recognition that compliance deadlines should be linked to the availability of manufacturer equipment.^{6/} Moreover, the Commission anticipated in its *Fourth*

^{5/} 47 C.F.R. § 1.3 (Good cause exists if application of the rules to the particular facts produces results that were not anticipated when the rules were adopted, those results impose an undue hardship upon particular persons, and a decision to grant the waiver does not conflict with the purposes and policies of the relevant rules.) *See* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir.1969).

^{6/} *Stay Order* at ¶ 10.

MO&O that technology-related issues, like those that the Companies now face, would cause delays in Phase II deployment.^{7/} The Companies should not be punished for the lack of available equipment due to no fault of their own, especially when they are undertaking, at great expense, an overbuild of their network with the GSM protocol to meet the Commission's E911 rules and other mandates.

D. The Instant Waiver Request is Limited in Scope and Provides a Route to Compliance

The Commission enacted Section 20.18(g) to ensure that wireless E911 will meet fundamental public safety needs “as quickly as reasonably possible.”^{8/} Considering the Companies' efforts to locate a TDMA handset-based solution and its current efforts to overbuild its existing network with the GSM protocol, it is clear that the Companies are seeking to satisfy the underlying purpose of Section 20.18(g) as soon as reasonably possible. Moreover, the instant waiver request is narrowly drawn to include waiver only through the May 31, 2004 milestone for ensuring 50 percent of all new handsets activated are location-capable. Thereafter, the Companies hope to be able to meet subsequent milestones, assuming the availability of sufficient quantities of GSM ALI-capable handsets. The instant petition thus carefully heeds the Commission's instruction that waiver requests from rural carriers are “specific, focused and limited in scope, and [show] a clear path to full compliance.”^{9/}

^{7/} *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems* (Fourth Memorandum Opinion and Order in CC Docket No. 94-102), 15 FCC Rcd. 17442 at ¶ 43 (2000) (“*Fourth MO&O*”).

^{8/} *Fourth MO&O* at ¶ 17.

^{9/} *Fourth MO&O* at ¶ 44.

III. CONCLUSION

In light of the foregoing, the Companies respectfully request that the limited waiver sought herein be granted.

Respectfully submitted,

PUBLIC SERVICE CELLULAR, INC. and
ENTERPRISE WIRELESS PCS, L.L.C.

By: /s/ Joshua P. Zeldis

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Dated: August 25, 2003

DECLARATION

I, Richard Bolt, hereby declare and state as follows:

1. I am Director of Engineering and Network Operations for Public Service Cellular, Inc, a "Tier III" CMRS carrier as defined by the Federal Communications Commission;
2. That I am familiar with the facts as set forth in the foregoing Petition of Public Service Cellular, Inc for Waiver of Sections 20.18(g)(i)-(ii) of the Commission's Rules;
3. That the statements set forth therein are true, complete and correct of my own knowledge except such statements made on information and belief, and as to such statements, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

8-25-2003
Date

Richard W Bolt
Richard Bolt